


1 DECISION AND ORDER
2 OF THE
3 DIVISION OF MEDICAL QUALITY
 MEDICAL BOARD OF CALIFORNIA

4 The foregoing Stipulation and Order, in case number
5 11-92-18906, is hereby adopted as the Order of the Division of
6 Medical Quality of the Medical Board of California. An effective
7 date of FEBRUARY 21, 1996, has been assigned to this Decision and
8 Order.

9 Made this 22nd day of JANUARY, 1996.

10
11 
12 FOR THE DIVISION OF MEDICAL QUALITY
 MEDICAL BOARD OF CALIFORNIA

13 Attachment: Accusation
14
15
16
17
18
19
20
21
22
23
24
25
26
27

DANIEL E. LUNGREN, Attorney General
of the State of California
ROBERT MCKIM BELL,
Deputy Attorney General
California Department of Justice
300 South Spring Street, Suite 5212
Los Angeles, California 90013-1204
Telephone: (213) 897-2556
Attorneys for Complainant

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation,
Against:

DIVYANG N. TRIVEDI, M.D.
13330 Bloomfield Avenue, #210
Norwalk, California 90650

Physician's and Surgeon's
Certificate No. A-42411,

Respondent.

NO. 11-92-18906

OAH No. L-9506068

STIPULATED SETTLEMENT
AND
DISCIPLINARY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the
parties to the above-entitled proceedings that the following
matters are true:

1. An Accusation in case number 11-92-18906 was filed
with the Division of Medical Quality, of the Medical Board of
California (the "Division") on May 4, 1995, and is currently
pending against Divyang N. Trivedi, M.D. (the "respondent").

2. The Accusation, together with all statutorily
required documents, was duly served on the respondent on or about
May 4, 1995, and respondent filed his Notice of Defense

2/18/95
12/18/95

1 contesting the Accusation on or about May 10, 1995. A copy of
2 Accusation No. 11-92-18906 is attached as Attachment "A" and is
3 hereby incorporated by reference as if fully set forth.

4 3. The Complainant, Dixon Arnett, was the Executive
5 Director of the Medical Board of California and brought this
6 action solely in his official capacity. The Complainant is
7 represented by the Attorney General of California, Daniel E.
8 Lungren, by and through Deputy Attorney General Robert McKim
9 Bell.

10 4. The respondent is represented in this matter by
11 Hari S. Lal, Esq., Attorney at Law, 1020 South Anaheim Boulevard,
12 Suite 320, Anaheim, California 92805.

13 5. The respondent and his attorney have fully
14 discussed the charges contained in Accusation number 11-92-18906,
15 and the respondent has been fully advised regarding his legal
16 rights and the effects of this stipulation.

17 6. At all times relevant herein, respondent has been
18 licensed by the Medical Board of California under Physician's and
19 Surgeon's Certificate No. A-42411.

20 7. Respondent understands the nature of the charges
21 alleged in the Accusation and that, if proven at hearing, the
22 charges and allegations would constitute cause for imposing
23 discipline upon his Physician's and Surgeon's Certificate.
24 Respondent is fully aware of his right to a hearing on the
25 charges contained in the Accusation, his right to confront and
26 cross-examine witnesses against him, his right to the use of
27 subpoenas to compel the attendance of witnesses and the

Dr. J. M.
12/12/93

1 production of documents in both defense and mitigation of the
2 charges, his right to reconsideration, appeal and any and all
3 other rights accorded by the California Administrative Procedure
4 Act and other applicable laws. Respondent knowingly, voluntarily
5 and irrevocably waives and give up each of these rights.

6 8. Respondent admits that a violation of section 725
7 of the Business and Professions Code (repeated acts of clearly
8 excessive use of diagnostic or treatment facilities as determined
9 by the standard of the community of licensees) in connection with
10 the treatment of a single patient in 1991 and 1992. Respondent
11 acknowledges that he has thereby subjected his Physician's and
12 Surgeon's Certificate to disciplinary action. Respondent agrees
13 to be bound by the Division's Disciplinary Order as set out
14 below. The admissions made by respondent herein are for the
15 purpose of this proceeding and any other proceedings in which the
16 Division of Medical Quality, Medical Board of California, or
17 other professional licensing agency is involved, and shall not be
18 admissible in any other criminal or civil proceedings.

19 9. Based on the foregoing admissions and stipulated
20 matters, the parties agree that the Division shall, without
21 further notice or formal proceeding, issue and enter the
22 following order:

23
24 DISCIPLINARY ORDER

25 IT IS HEREBY ORDERED that Physician's and Surgeon's
26 Certificate number A-42411 issued to Divyang N. Trivedi, M.D. is
27 revoked. However, the revocation is stayed and respondent is

JSW
12/18/95

1 placed on probation for thirty (30) months on the following terms
2 and conditions. Within 15 days after the effective date of this
3 decision the respondent shall provide the Division, or its
4 designee, proof of service that respondent has served a true copy
5 of this decision on the Chief of Staff or the Chief Executive
6 Officer at every hospital where privileges or membership are
7 extended to respondent or where respondent is employed to
8 practice medicine and on the Chief Executive Officer at every
9 insurance carrier where malpractice insurance coverage is
10 extended to respondent.

11 1. EDUCATION COURSE Within ninety (90) days of the
12 effective date of this decision, and on an annual basis
13 thereafter, respondent shall submit to the Division or its
14 designee for its prior approval an educational program or course
15 in the areas of allergies and/or clinical immunology, which shall
16 not be less than 40 hours per year, for each year of probation.
17 This program shall be in addition to the Continuing Medical
18 Education requirements for re-licensure. Following the
19 completion of each course, the Division or its designee may
20 administer an examination to test respondent's knowledge of the
21 course. Respondent shall provide proof of attendance for 65
22 hours of continuing medical education of which 40 hours were in
23 satisfaction of this condition and were approved in advance by
24 the Division or its designee.

25 2. ETHICS COURSE Within sixty (60) days of the
26 effective date of this decision, respondent shall enroll in a
27 course in Ethics approved in advance by the Division or its

5-11-75
12/18/95

1 designee, and shall successfully complete the course during the
2 first year of probation.

3 3. MEDICAL DOCUMENTATION Respondent shall not issue
4 bills for medical services without indicating thereupon the
5 person or persons who provided the medical services; if the
6 person who provided the medical services, in whole or in part, is
7 a physician other than himself, he shall plainly so state.

8 4. OBEY ALL LAWS Respondent shall obey all federal,
9 state and local laws, all rules governing the practice of
10 medicine in California, and remain in full compliance with any
11 court ordered criminal probation, payments and other orders.

12 5. QUARTERLY REPORTS Respondent shall submit
13 quarterly declarations under penalty of perjury on forms provided
14 by the Division, stating whether there has been compliance with
15 all the conditions of probation.

16 6. PROBATION SURVEILLANCE PROGRAM COMPLIANCE
17 Respondent shall comply with the Division's probation
18 surveillance program. Respondent shall, at all times, keep the
19 Division informed of his or her addresses of business and
20 residence which shall both serve as addresses of record. Changes
21 of such addresses shall be immediately communicated in writing to
22 the Division. Under no circumstances shall a post office box
23 serve as an address of record.

24 Respondent shall also immediately inform the Division,
25 in writing, of any travel to any areas outside the jurisdiction
26 of California which lasts, or is contemplated to last, more than
27 thirty (30) days.

Handwritten:
D.W. J.M.
12/18/95

1 7. INTERVIEW WITH THE DIVISION, ITS DESIGNEE OR ITS

2 DESIGNATED PHYSICIAN(S) Respondent shall appear in person for
3 interviews with the Division, its designee or its designated
4 physician(s) upon request at various intervals and with
5 reasonable notice.

6 8. TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR IN-STATE
7 NON-PRACTICE In the event respondent should leave California to

8 reside or to practice outside the State or for any reason should
9 respondent stop practicing medicine in California, respondent
10 shall notify the Division or its designee in writing within ten
11 (10) days of the dates of departure and return or the dates of
12 non-practice within California. Non-practice is defined as any
13 period of time exceeding thirty days in which respondent is not
14 engaging in any activities defined in Sections 2051 and 2052 of
15 the Business and Professions Code. All time spent in an
16 intensive training program approved by the Division or its
17 designee shall be considered as time spent in the practice of
18 medicine. Periods of temporary or permanent residence or
19 practice outside California or of non-practice within California,
20 as defined in this condition, will not apply to the reduction of
21 the probationary period.

22 9. COMPLETION OF PROBATION Upon successful completion
23 of probation, respondent's certificate shall be fully restored.

24 10. VIOLATION OF PROBATION If respondent violates
25 probation in any respect, the Division, after giving respondent
26 notice and the opportunity to be heard, may revoke probation and
27 carry out the disciplinary order that was stayed. Only failure

AWM
12/18/95

1 to comply with terms of this order or acts of professional
2 misconduct committed after the date on which probation begins
3 shall constitute a basis for filing a petition to revoke
4 probation. Acts of professional misconduct committed prior to
5 the date on which probation begins shall be raised by means of an
6 accusation. If an accusation or petition to revoke probation is
7 filed against respondent during probation, the Division shall
8 have continuing jurisdiction until the matter is final, and the
9 period of probation shall be extended until the matter is final.

10 11. LICENSE SURRENDER Following the effective date of
11 this probation, if respondent ceases practicing due to
12 retirement, health reasons or is otherwise unable to satisfy the
13 terms and conditions of probation, respondent may voluntarily
14 tender his certificate to the Board. The Division reserves the
15 right to evaluate the respondent's request and to exercise its
16 discretion whether to grant the request, or to take any other
17 action deemed appropriate and reasonable under the circumstances.
18 Upon formal acceptance of the tendered license, respondent will
19 not longer be subject to the terms and conditions of probation.

20 CONTINGENCY

21 This stipulation shall be subject to the approval of
22 the Division. If the Division fails to adopt this stipulation as
23 its Order, the stipulation shall be of no force or effect, and
24 shall be inadmissible in any legal action between the parties.

25 ACCEPTANCE

26 I have read the above Stipulated Settlement and
27 Disciplinary Order. I have fully discussed the terms and

1 conditions and other matters contained therein with my attorney,
2 Hari S. Lal. I understand the effect this Stipulated Settlement
3 and Disciplinary Order will have on my Physician's and Surgeon's
4 Certificate, and agree to be bound thereby. I enter this
5 stipulation freely, knowingly, intelligently and voluntarily.

6 DATED: 12/18/95

7
8 Divyang N. Trivedi, M.D.
9 DIVYANG N. TRIVEDI, M.D.
Respondent

10
11 I have read the above Stipulated Settlement and
12 Disciplinary Order and approve of it as to form and content. I
13 have fully discussed the terms and conditions and other matters
14 therein with respondent Divyang N. Trivedi, M.D..

15 DATED: 12/18/95

16
17 Hari S. Lal
18 Hari S. Lal
Attorney for Respondent,
19 ALLERGY, ASTHMA, SINUSITIS
MEDICAL, INC., A PROFESSIONAL
20 CORPORATION.
21
22
23
24
25
26
27

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7

DATED: 10 December, 1995.

Rosen M. The

Attorneys for Complainant

ATTACHMENT "A"

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 ROBERT MCKIM BELL,
Deputy Attorney General
3 California Department of Justice
300 South Spring Street, Suite 5212
4 Los Angeles, California 90013-1204
Telephone: (213) 897-2556
5
6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **DIVISION OF MEDICAL QUALITY**
10 **MEDICAL BOARD OF CALIFORNIA**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation) NO. 11-92-18906
12 Against:)
13 DIVYANG N. TRIVEDI, M.D.) **A C C U S A T I O N**
14 13330 Bloomfield Avenue, #210)
15 Norwalk, California 90650)
16 Physician's and Surgeon's)
17 Certificate No. A-42411,)
18 Respondent.)

18 The Complainant alleges:

19 **PARTIES**

- 20 1. Complainant, Dixon Arnett, is the Executive
21 Director of the Medical Board of California (hereinafter the
22 "Board") and brings this accusation solely in his official
23 capacity.
- 24 2. On or about December 30, 1985, Physician's and
25 Surgeon's Certificate No. A-42411 was issued by the Board to
26 Divyang N. Trivedi, M.D. (hereinafter "respondent"), and at all
27 times relevant to the charges brought herein, this license has

1 been in full force and effect.

2

3

JURISDICTION

4

5

6

7

8

3. This accusation is brought before the Division of Medical Quality of the Medical Board of California Department of Consumer Affairs (hereinafter the "Division"), under the authority of the following sections of the California Business and Professions Code (hereinafter "Code"):

9

10

11

12

A. Section 2227 provides that the Board may revoke, suspend for a period not to exceed one year, or place on probation, the license of any licensee who has been found guilty under the Medical Practice Act.

13

14

B. Section 2234(c) provides that unprofessional conduct includes repeated negligent acts.

15

16

17

18

19

20

21

C. Section 725 provides that repeated acts of clearly excessive prescribing or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon.

22

23

24

25

26

27

D. Section 125.3 provides, in part, that the Board may request the administrative law judge to direct any licensee found to have committed a violation or violations of the licensing act, to pay the Board a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

2

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

19

20
21
22
23
24
25
26
27

1 Bromfed PD one tablet twice day; Beconase Spray two sprays
2 twice a day; Amoxcil one tablet three times a day for 21
3 days.

4 B. He was seen again on June 14, 1991, for re-
5 evaluation and again, on June 25, 1991, for an additional
6 re-evaluation. The patient was, again, evaluated on January
7 30, 1992, and was placed on the following medications:
8 Ceftin 250 mg; continuation of Bromfed. Pulmonary function
9 studies with pre- and post-bronchodilator were repeated and
10 read as normal.

11 C. The patient was then evaluated on April 22,
12 1992, and was given Bromfed; Nasacort two sprays four times
13 a day, and Ceftin and referred to another physician, Dr.
14 Domb.

15 D. The patient was seen again on May 15, 1992
16 when he complained of headache, vomiting, and slight fever
17 and was referred to a neurologist, Dr. Coe, for evaluation
18 of migraine. Medications were prescribed at that time were
19 Advil or Tylenol two tablets. The patient was ordered to
20 take no milk and was placed on a bland diet which included
21 bananas, rice, apple, toast, and chicken broth. Pulmonary
22 function studies were done on June 5, 1992, with pre- and
23 post-bronchodilator reported as normal, and a sinus
24 ultrasound was done on June 12, 1992.

25 E. Additional entries in the medical record
26 include documentation of immunotherapy beginning on June 14,
27 1991. Four patient visits occurred in June, 1991 and 22

visits occurred in 1992, beginning in January and ending on October 2, 1992.

F. In summary, ultrasound examination of the sinuses is not an accepted procedure for the diagnosis of sinus disease. The patient has three pulmonary function studies with pre- and post-bronchodilator examination. This course of care was excessive in light of the clinical findings presented in the patient's medical record. There is also no valid indication for oximetry studies in this patient.

6. Patient E. A.

A. This patient is an 11 year-old boy seen initially on June 18, 1991, with a diagnosis listed as allergic rhinitis, sinusitis, and shortness of breath. On June 18, 1991 the patient, according to medical records, received a history and physical examination, complete skin tests as well as the following tests: sinus ultrasound, audiogram, oximetry, pulmonary function studies with pre- and post-bronchodilator studies. On the same date, June 18, 1991, the patient was given the following medications: Bromfed one tablet twice a day; Beconase two sprays in each nostril twice a day; Amoxcil 500 mg one tablet three times a day; and Maxair Inhaler four inhalations four times a day.

B. The patient was re-evaluated on June 25, 1991, and immunotherapy was started on June 25 and also on June 28, 1991. An evaluation was done on January 30, 1992,

1 with a diagnosis of bronchospasm and sinusitis. Sinus
2 ultrasound was performed on January 30, 1992, and a
3 pulmonary function study was also done on January 30, 1992.
4 The pulmonary function study was reported as normal.
5 Medication prescribed was a Proventil Meter Dose Inhaler on
6 January 30, 1992 two puffs 15 to 30 minutes before exercise
7 or as needed. He was also given Ceftin and InspirEase.
8 Immunotherapy was continued in 1992 and the patient was re-
9 evaluated on April 28, 1992. He was also given Aristocort 1
10 cc and Depo-Medrol 1 cc by injection and Azmacort four puffs
11 twice a day. Pulmonary function studies were repeated on
12 April 28, 1992, and reported as normal.

13 C. An evaluation of the patient on May 4, 1992
14 was again accompanied by pre- and post bronchodilator
15 pulmonary function studies for prescriptions of Azmacort and
16 Ventolin. The patient was last seen on September 22, 1992,
17 and was placed on Proventil Repetabs.

18 D. In summary, the patient had two sinus
19 ultrasounds. This test is not an accepted diagnostic
20 procedure for sinus disease. The patient also received four
21 pulmonary function studies in less than one year with pre-
22 and post-bronchodilator studies, and this constitutes
23 excessive diagnostic testing. He also received an injection
24 of Depo-Medrol and Aristocort inappropriately.

25
26 7. Patient B. A.

27 A. This patient is a 32-year old woman who was

1 seen initially on April 22, 1992 for contact dermatitis.
2 She was treated with Seldane and a medication listed as
3 "Cocktail," a combination of Aristocort and Depo-Medrol 2 cc
4 each side. She was seen again on April 28, 1992 at which
5 time she was diagnosed with contact dermatitis and allergic
6 rhinitis. On April 28, 1992, the patient received a
7 complete history and physical, skin testing, pulmonary
8 function studies with pre- and post-bronchodilator,
9 tympanometry, and sinus ultrasound. She was treated with
10 the following medications: Poly-Histine-D Caps; Beconase
11 Nasal Spray; and Amoxcil 500 mg one tablet three times a
12 day.

13 B. She was re-evaluated on May 20, 1992, with
14 listed symptoms of wheezing and coughing. She was given a
15 Vanceril Inhaler and Proventil Inhaler with an additional
16 injection of Aristocort and Depo-Medrol. She also received
17 pulmonary function studies.

18 C. On June 5, 1992, she returned with coughing
19 and wheezing. Pulmonary function studies were repeated.
20 She was given a Vanceril Inhaler and Proventil Repetabs.

21 D. In summary, this patient saw the physician
22 for contact dermatitis and was evaluated subsequently for
23 allergic rhinitis and was extensively tested with pulmonary
24 function studies, tympanometry and sinus ultrasound. Sinus
25 ultrasound is not an accepted diagnostic measure for sinus
26 disease. There was excessive use of pulmonary function
27 studies for this patient and the patient was receiving

1 inhaled corticosteroids and she received three injections of
2 a combination of two systemic corticosteroids on April 22,
3 May 20, and June 16, 1992. The extensive diagnostic studies
4 and treatment for this patient was not consistent with the
5 list of diagnoses in the medical record.

6
7 8. Patient L. G.

8 A. This patient is a 23-year old woman who was
9 seen on April 29, 1991 with a diagnosis of allergic
10 rhinitis, sinusitis, conjunctivitis and asthma. The same
11 day, she had a complete history and physical with an
12 audiogram, oximetry, and tympanogram, pulmonary function
13 studies with pre- and post-bronchodilator and an ultrasound
14 of the sinuses. Medications prescribed were Proventil
15 Inhaler; Vanceril Inhaler; Vancenase AQ; and Hismanal.

16 B. In summary, this patient received extensive
17 and unnecessary testing. The ultrasound test for sinuses is
18 not an accepted diagnostic procedure. There was no
19 indication for an audiogram, oximetry, or tympanogram.

20
21 9. Patient M. G.

22 A. The patient is a three-year old male child
23 who was seen on April 23, 1991, with diagnoses listed as
24 perennial allergic rhinitis, conjunctivitis, serious otitis
25 media, chronic sinusitis, and asthma. The following tests
26 were done on April 23, 1991: extensive skin testing,
27 tympanometry, oximetry, an ultrasound of the sinuses.

1 Medications prescribed were Suprax 1 teaspoon daily for 21
2 days; Rynatan Suspension; MaxAir Meter Dose Inhaler two
3 inhalations four times a day; Intal Meter Dose Inhaler two
4 inhalations four times a day; and Ventolin Elixir 1 teaspoon
5 three to four times a day. There is no record of any
6 follow-up visits.

7 B. In summary, ultrasound of sinuses is not an
8 acceptable medical diagnostic procedure. The medical record
9 does not show how a three year old child was to use the
10 prescribed meter dose inhalers.

11
12 10. Patient C. G.

13 A. The patient is a four month-old female child
14 who was evaluated on April 23, 1991. The diagnoses recorded
15 were allergic rhinitis, allergic conjunctivitis, asthma,
16 milk allergies, and serious otitis media. The same day, the
17 patient had a history and physical, skin tests, ultrasound
18 of the sinuses, and tympanometry. The patient was treated
19 with Rynatan Suspension one-half teaspoon twice a day;
20 Suprax Elixir Liquid one-half teaspoon daily; MaxAir Inhaler
21 two puffs four times a day; Intal Inhaler two puffs four
22 times a day; and Ventolin Elixir one-half teaspoon four
23 times a day. The child was also placed on a milk avoidance
24 diet and her formula was changed to Pregestamil. No follow-
25 up visits are indicated in the medical record.

26 B. In summary, ultrasound is not an accepted
27 diagnostic procedure for sinus disease. There is no

1 indication in this patient's medical record how a four
2 month-old infant was to use the inhalers prescribed, nor is
3 there a recorded weight in the medical record.
4

5 11. Patient L. M.

6 A. The patient is a seventeen year old female
7 who was seen on March 13, 1992 with a history of allergic
8 rhinitis, conjunctivitis, and sinusitis. According to her
9 medical chart, the patient had a complete history and
10 physical, complete skin testing, tympanometry, audiogram,
11 oximetry, and sonogram of the sinuses the same day. Also
12 the same day, March 13, 1992, the patient was given
13 pulmonary function studies with pre- and post-bronchodilator
14 studies. The following medications were prescribed: Tavist-
15 D tablets one tablet twice a day; Nasacort Nasal Spray two
16 sprays in each nostril daily; Suprax tablet one tablet daily
17 for 21 days; Proventil Inhaler two puffs four times a day.
18 She was also given an injection of Aristocort and Depo-
19 Medrol on March 13, 1992.

20 B. Immunotherapy was started on March 13, 1992,
21 and continued until May 27, 1992.

22 C. In summary, there is no indication for the
23 tympanometry, oximetry and audiogram tests. As previously
24 stated, sonogram of the sinuses is not an accepted
25 diagnostic procedure for sinus disease.

26 //

27 //

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

5
6
7
8
9
0
1
2
3
4
5
6
7

8
9
0
1
2
3
4
5
6
7

0
1
2
3
4
5
6
7

2
3
4
5
6
7

7